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**MINUTES**  
**FRIDAY – DECEMBER 5, 2003**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:03 a.m., on Friday, December 5, 2003, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Dr. Garon Smith, Ward Shanahan, David Fishbaugh, Susan Kirby Brooke, Kim Lacey (arrived from airport at 9:30) and Russ Hudson (via teleconference)

Board Members Absent: None

Board Attorney(s) Present: Tom Bowe and Kelly O'Sullivan, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher

Department Personnel Present: Jan Sensibaugh, Director; Tom Livers, Deputy Director; John North, Chief Legal Counsel, Legal Unit (Legal), DIR; Claudia Massman, Legal, DIR; Jolyn Eggart, Legal, DIR; James Madden, Legal, DIR; Keith Jones, Legal, DIR; Norm Mullen, Legal, DIR; Judy Hanson, Permitting & Compliance Division (PCD); Don Vidrine, Chief, Air & Waste Management Bureau (AWMB), PCD; Jan Brown, AWMB, PCD; Charles Homer, AWMB, PCD; David Klemp, AWMB, PCD; Debbie Skibicki, AWMB, PCD; Brian Hohn, AWMB, PCD; Bonnie Lovelace, Chief, Water Protection Bureau (WPB), PCD; Tom Reid, WPB, PCD; Jon Dilliard, Chief, Community Services Bureau (CSB), PCD; Rick Thompson, CSB, PCD; John Arrigo, Administrator, Enforcement Division (ENF); Frank Gessaman, ENF; Art Compton, Administrator, Planning, Prevention & Assistance Division (PPAD); Christian Levine, Resource, Protection & Planning Bureau (RPPB), PPAD; Mike Suplee, RPPB, PPAD

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Harmon Ranney, Fidelity Exploration; Heidi Bruner, Holcim; Terry Wadsworth, Petroleum Tank Release Compensation Board; Gail Abercrombie, Montana Petroleum Association; Dexter Busby, Montana Refining Company; Doug Dodge, Town Pump, Inc.

## **I. ADMINISTRATIVE AGENDA ITEMS**

- A. Review and approve minutes of September 26, 2003 meeting.

Dr. Smith MOVED to APPROVE the minutes of the September 26, 2003 Board meeting. Mr. Shanahan SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- B. Set 2004 Meeting Schedule.

Mr. Livers said the Department had proposed dates for the meetings in 2004 and they were included in the Board packets. He explained that there were two conflicts: one with the March meeting and one with the June meeting. He reminded the Board that they were planning to visit the Upper Blackfoot Mining Complex during the June meeting.

Chairman Russell suggested visiting the mining complex in July.

Dr. Smith MOVED to accept the dates as proposed for the meeting schedule in 2004. Mr. Shanahan SECONDED the motion. The motion CARRIED with a unanimous VOTE.

## **II. BRIEFING AGENDA ITEMS**

- A. CONTESTED CASE UPDATE:

1. Cases assigned to Hearing Officer Kelly O'Sullivan

- a. In the matter of applicant **Town of Geraldine's Montana Pollutant Discharge Elimination System Permit (MPDES)** No. MT-002-0826.

Ms. O'Sullivan said DEQ had a proposal for a new permit, but had not provided it to the Town of Geraldine. She said if the town agreed with it, there would be a settlement agreement.

- b. In the Matter of the request for hearing of **Margrit Matter (BER 2003-10 SUB) under Mont. Code Ann. Sec. 76-4-126(1)**.

Ms. O'Sullivan said the parties had requested additional time to try to settle the case.

2. Cases assigned to Hearing Officer Tom Bowe

- a. In the matter of the request for hearing of **M&W Investments, Inc. (EQ #01-1457 and #00-1822)**.

Mr. Bowe said the prehearing conference was scheduled for October 2004 and that the parties were using the time to monitor water quality.

- b. In the matter of the request for hearing of **CR Kendall Corporation (BER 2002-09 MM)**.

Mr. Bowe said the parties had jointly requested more time to submit a proposed schedule. He said he had granted the request and the proposed schedule is due by January 30, 2004.

- c. In the matter of the Notice of Violation and Statement of Proposed Penalty issued to **Mission Valley Concrete Industries, Inc. (BER 2003-11 OC)**.

Mr. Bowe said the parties had not finalized the terms of the settlement as had been suggested at the September meeting. He said the new deadline was December 15 for submitting settlement papers, which would cause the settlement to be brought before the Board at the January meeting.

- d. In the matter of the request for hearing of **Crystal View Estates, Flathead County (BER 2003-05 SUB)**.

Mr. Bowe said this matter was pending judicial review in District Court and that the record was sent to the court in late November.

**B. OTHER BRIEFING ITEMS**

**1. Status report on current Coal Bed Methane MPDES permits, applications and potential activity.**

Tom Reid said he was giving a briefing on the coal bed methane permitting activities to date, which fall into three categories: Department work on the general permit; individual permits, such as Fidelity; and 401 certifications.

Mr. Reid said the general permit was released for public comment concurrently with the EIS. The permit would allow discharge to off-channel ponds. He said the Department had responded to comments, but the general permit had not yet been issued. He said there had been several public hearings held in regard to the permit and the Department anticipates issuing a general permit after the first of the year.

Mr. Reid provided information on the individual MPDES permit issued to Fidelity and the individual MPDES permit application for Powder River Gas now being reviewed. Further discussion took place regarding Powder River Gas' methodology (an ion exchange process) for treating the water from their Coal Creek Federal Coalbed Natural Gas Project.

Mr. Reid said the Department had completed two 401 certifications for Fidelity for an additional 86 wells for the Tongue River Badger Hills, and three additional wells for the Federal Wells Project.

Other discussion took place regarding monitoring activities and the quality of water entering Montana from Wyoming. Mr. Hudson requested periodic trend reports on concentrations of EC and SAR. Dr. Smith requested that the Department update the Board at the July meeting on what monitoring data are available.

Harmon Ranney explained that Fidelity had funded an "agronomic monitoring protection and prevention plan." Fidelity is monitoring what is discharged to the Tongue River.

Chairman Russell opened the floor for public comment. No one responded.

**2. Schedule of rulemaking planned for the coming year.**

Mr. Livers explained that the spreadsheet contained in the Board members packets was the Department's comprehensive matrix, showing all rulemakings in which the Department is involved. Dr. Smith suggested putting the matrix on the Web.

Mr. Hudson requested briefings on TMDL development. Mr. Livers promised one at the January meeting and other briefings a couple of times per year.

**III. ACTION AGENDA ITEMS**

**A. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES:**

**1. In the matter of the amendment of ARM 17.50.401, 17.50.402, 17.50.403, 17.50.410, 17.50.411, 17.50.412 and 17.50.416 pertaining to solid waste fees.**

Rick Thompson provided an overview of the rulemaking and provided specifics about the different fees and the uses of the funds.

Mr. Bowe was the presiding officer for the public hearing. He said there had been public comment at the hearing and wondered if anyone from the public was present that wanted to speak to the matter. No one from the audience responded.

Chairman Russell called for a motion to adopt the amendments as proposed, the Presiding Officer's report, and the 521 and 311 analyses. Ms. Lacey so MOVED. Dr. Smith SECONDED the motion. The motion CARRIED with a unanimous VOTE.

2. In the matter of the amendment of ARM 17.8.1213 to incorporate changes to 40 CFR 70.6(c)(5)(iii)(B) and 70.6(c)(5)(iii)(C) regarding Title V annual compliance certifications and whether the reporting facility's compliance was continuous or intermittent during the reporting period.

Charles Homer summarized the action on the amendments saying the hearing had been held November 5. He said there were no public comments received at the hearing. He clarified the terms "continuous" and "intermittent."

Chairman Russell asked if anyone from the public would like to comment on the rulemaking. No one responded. He called for a motion to adopt the amendments as proposed, the Presiding Officer's report, and the 521 and 311 analyses. Mr. Fishbaugh so MOVED. Ms. Brooke SECONDED the motion. The motion CARRIED with a unanimous VOTE.

B. INITIATION OF RULEMAKING AND APPOINTMENT OF HEARING OFFICER:

1. Update the Air Quality Incorporation by Reference Rules at ARM 17.8.102 (annual update).

Charles Homer explained that this rulemaking was the annual update to the air quality incorporation by reference rules to adopt the current edition of federal regulations, state statutes and state rules.

Chairman Russell asked if any member of the public wanted to comment on the rulemaking. No one responded. Mr. Shanahan MOVED to initiate the rulemaking as proposed by the Department and to appoint Mr. Bowe Presiding Officer. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.

2. Amend ARM 17.30.502, 615, 619, 651, 653, 656, 657, 702, 715, 1001, 1006 and 1007 (definition rule) to establish a classification system for streams with sporadic flow and to update WQB-7.

Christian Levine said the classifications provide for a more realistic identification of existing and potential uses of the water in these streams. He added the classifications also allow specific water bodies to be classified without an aquatic life use and allow for some regulatory relief for certain discharges to some specific water bodies.

Mr. Levine said the Board adopted the existing classifications in July of 2002. The Department then submitted the classifications to the EPA. In June of 2003 the Board was notified that the EPA was going to approve some of the standards and disapprove others. Mr. Levine provided the specifics of which classifications were approved and which ones were denied. He said the Department was proposing to make the classifications slightly more stringent and to enforce protection to aquatic life that could develop within the systems.

Discussion took place regarding ammonia.

Mr. Shanahan MOVED to initiate the rulemaking and to appoint Mr. Bowe Presiding Officer. Ms. Brooke SECONDED the motion. The motion CARRIED with a unanimous VOTE.

C. NEW CONTESTED CASES

1. In the matter of the request for hearing by the owners of the **Former Husky Station (BER 2003-12 UST)**.

Mr. Bowe said he was the standing interim hearing examiner and that he had issued the first prehearing order and a scheduling order setting the hearing for June 15, 2004.

Ms. Brooke MOVED to appoint Mr. Bowe as permanent hearing examiner in the case. Mr. Shanahan SECONDED the motion. The motion CARRIED with a unanimous VOTE.

#### **IV. GENERAL PUBLIC COMMENT**

Chairman Russell asked if any member of the public wished to speak to the Board. There was no response.

Discussion took place regarding Board member appointments and terms. Ms. Brooke asked to receive any news articles regarding matters that pertained to the Board. Other Board members concurred and Mr. Livers agreed that the Department Public Information Officer would email those to the Board.

#### **V. ADJOURNMENT**

Ms. Lacey MOVED for adjournment. Ms. Brooke SECONDED the motion. The motion CARRIED with a unanimous VOTE. The Board meeting adjourned at 10:50 a.m.

Board of Environmental Review December 5, 2003 Minutes Approved:

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JOSEPH W. RUSSELL, M.P.H.  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

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DATE